IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 20936 of 2000 &

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CONTEMPT CASE NO.1382 OF 2004

Between:

V.Rama Mohan Rao, s/o. V.Ramachandra Rao,
Chaitanya Kalasala Jr.College, Nagarjunasagar Road,
Opp.B.N.Reddy complex , Hyderabad.

..... PETITIONER

AND

1 The Regional Joint Direactor of Intermediate Educational
Warangal.
2 Chaitanya Kalasala Jr.College, Karmanghat,Nagarjunasagar
Road, Hyderabad,R.R.Dist, rep.by it's Correspondent.
3 Chaitanya Kalasamithi, Nagarjunasagar
Road, Karmanghat, Hyderabad,R.R.Dist, rep.by it's Secretary.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court be pleased to issue an appropriate Writ, order or direction especially one in the nature of a Writ of Mandamus directing the Respondents herein to release arrears of salary and other allowances to the petitioner form the date of issue of the termination order dt.1-8-1991 and current salaries from grant=in-aid in view of the orders of the 1st respondent, Regional Joint Director of Intermediate Education, Warangal dt.6-7-2000 in R.CNo.B2/2833/97 WP.No. 5094/94/CC.No.822/2000.

Counsel for the Petitioner:MR.Y.VENKAT SASTRY

Counsel for the Respondents: GP FOR HIGHER EDUCATION

CONTEMPT CASE NO.1382 OF 2004

Between:

V.Rama Mohan Rao, S/o.Ramachandra rao, Junior Lecturer in chaitanya Kalasala Junior College, Nagarjunasagar Road, Opp.B.N.Reddy Complex, Hyderabad.

...PETITIONER

AND

1. Sri G.V.Hanumantha Rao, The Regional Joint Director of Intermediate Education, Government of A.P., Warangal.
2. Sri P.Rama Krishna Reddy, Special Officer-cum-The Correspondent, Chaitanya Kalasala Jr.College, Nagarjunasagar Road, Opp.B.N.Reddy Complex, Hyderabad.
3. The Secretary, Chaitanya Kala samithi Nagarunasagar Road, Opp.B.N.Reddy Complex, Hyderabad.

(R3 is not necessary to this CC)

...RESPONDENTS.

Contempt case U/s. 10 to 12 of Contempt of Courts Act to punish the Respondents herein for violating, disobeying the Order of the High Court dated 23.08.2004 in W.P.M.P.No.13449 of 2004 in W.P.No.20936 of 2000.

Counsel for the Petitioner: MR.Y.VENKAT SASTRY (IN BOTH CASES)

Counsel for the Respondents: GP FOR HIGHER EDUCATION (IN BOTH CASES)

The Court made the following :

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THE HION'BLE SRI JUSTICE B. PRAKASH RAO

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WRIT PETITION NO.20936 OF 2000

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AND

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CONTEMPT CASE NO.1382 OF 2004

COMMON ORDER:

Heard Sri Y.Venkat Sastri, the learned counsel appearing for the petitioner and the learned Government Pleader for Higher Education appearing on behalf of the first respondent and Sri Ch.Ravindra Babu, the learned counsel appearing on behalf of the second respondent.

The petitioner herein, who has been working as Junior Lecturer with the respondents 2 and 3, filed this writ petition, *inter alia,* seeking a writ of Mandamus to release his arrears of salary and other allowances for the period from 01.08.1991 to 16.07.2000.

The facts of the case, in brief, are that the petitioner was initially appointed as Junior Lecturer with the 2nd respondent on 01.08.1978 which is a recognized Institution and subsequently the post of the petitioner has been admitted to grant-in-aid in the month of June, 1981 and thus the salaries are being paid by the Government under the said Scheme. Later, the petitioner's probation was also declared on 06.07.1981 with effect from 01.08.1980. However, on joining after summary vacation on 24.06.1991, he was served with an order dated 20.08.1991 terminating his services

with effect from 25-06-1991. However, it is pointed out that he had to go on leave on 27.06.1991 but later on with the service of termination order, he preferred a statutory appeal on 13.09.1991 before the first respondent on the ground that the impugned order of termination is in violation of Section 79 of the A.P. Education Act, 1982 (for short 'the Act'). As the said appeal was not being disposed of, the petitioner had to file a writ petition in W.P.No.5049 of 1994 in this Court and this Court by order dated 11.02.2000 directed the respondents to dispose of the appeal within four weeks. In spite of the same, no action was taken. Therefore, the petitioner had to file a contempt in C.C.No.822 of 2000. Whereafter, proceedings have been issued on 06.07.2000 by the said appellate authority allowing the appeal and set aside the orders of termination mainly on the ground of non-compliance of the mandate under Section 79 of the Act. Accordingly, the petitioner was reinstated on 17.07.2000. Thereafter, no steps have been taken to initiate any fresh enquiry against the petitioner. Having regard to the expiry of the period of three months, the petitioner could not possibly proceed against for such action. Though the petitioner has made representations and also issued a legal notice on 24.07.2000 to the respondents for making payment of arrears of salary, the same is not complied by them. It is the case of the petitioner that once the order of termination is set aside, the petitioner will be deemed to be in service and, therefore, he is entitled for all the benefits under law. It is his further case that though the respondents 2 and 3 have collected the amounts towards salary of the petitioner, the same was not deposited. Therefore, there was misappropriation of the amounts. Thus, the petitioner is entitled for arrears of salary for the above period. Hence, the Writ Petition.

Contesting the claim of the petitioner, the first respondent filed counter affidavit admitting the fact that the post held by the petitioner was admitted to grant-in-aid with effect from 01.06.1981. However, subsequently, due to irregular attendance and absconding from duty, the termination orders were issued to the petitioner on 20.08.1991 with effect from 25.06.1991. The same was challenged in appeal, which was allowed, and also in the mean while the petitioner had filed a Writ Petition for disposal of the said appeal. However, it is pointed out that the supplementary annual salary statement for the year 2000-2001 in respect of the petitioner was approved and the arrears of salary in pre-revised was not paid as the concurrence of the Finance & Planning Department is essential and the budget has to be released separately. The petitioner is receiving salary regularly from grant-in-aid from March, 2001. However, the arrears are yet to be paid as the period between termination and

reinstatement was not regularized, which can be after finalization of the enquiry against the petitioner, which is still awaited. Further, it was pointed out that the interim direction as obtained by the petitioner for payment of salary is not sustainable. It is also the case of the first respondent that an enquiry commission comprising of three Junior Lecturers, was appointed on 09.11.2000 wherein the petitioner was asked to appear before the said commission. Instead of participating in the enquiry, the petitioner submitted a letter dated 20.11.2000 informing the Correspondent of the college that the enquiry committee is contrary to Disciplinary Rules and its members are the erstwhile management, who were purely connected with the termination orders. Whereupon, the said committee submitted a report dated 30.01.2001 stating that it is not possible to conduct enquiry. This was followed by a letter dated 30.11.2001 by the Director of Intermediate Education for finalization of disciplinary case against the petitioner as per the rules and also in terms of G.O. Ms. No. 467, Education, dated 03.11.1983. In the mean while, it was stated that the management of the college was suspended and a Special Officer was appointed during the year 2001. Thereafter, the Regional Joint Director as per letter dated 15.12.2001 directed the Special Officer to finalize the disciplinary case immediately. Thereupon, the said Special Officer issued a letter dated 19.04.2002 to the petitioner to submit a reply to the charge memo issued, to which the petitioner refused to give any reply and there was no co-operation from the petitioner. As per the letter dated 13.09.2002, the Special Officer was once again directed by the Regional Joint Director to complete the process of enquiry immediately and submit report. This was followed by a reminder dated 12.05.2003. Thereafter, the Special Officer, as per the letter dated 14.08.2003, has appointed an enquiry officer viz. Sri Y.V.Chowdary, District Vocational Education Officer. This was approved by the Regional Joint Director as per proceedings dated 23.08.2003 and therefore, the report of the said enquiry officer is still awaited. The petitioner was served with a memo dated 21.11.1990 to explain as to why a break in service should not be effected for going on leave frequently. Therefore, the termination order was issued on 20.08.1991. Thus, the case of the first respondent is that having regard to the non-cooperation of the petitioner with the enquiry proceedings, the petitioner is not entitled to any arrears of salary for the period as pointed out above.

No separate counter affidavit has been filed by the respondents 2 and 3 herein.

At the time admission, this Court granted interim direction for payment of salary. As the said order having not been complied with, the petitioner filed a contempt in C.C. No.1382 of 2004. Since virtually, common aspect is involved in both the cases, at the request of counsel on both sides, the main Writ Petition as well as Contempt Case are being taken up together for disposal.

After elaborate submissions made from both the sides, the point that arises for consideration is as to whether the petitioner is entitled for arrears of salary and other benefits during the period from 01.08.1991 to 16.07.2000 ?

There is no dispute to the fact that the petitioner was an employee appointed in the year 1978 and his probation was also declared and the post to which the petitioner was appointed is also admitted to grant-in-aid scale. There is also no dispute that having regard to the repeated absence and seeking leave, his services were terminated on 20.08.1991 with effect from 25.06.1991, which stated to have been received by the petitioner on 20.08.1991. On appeal, the said order of termination was set aside by the appellate authority as per its orders dated 06.07.2000 on the ground that the second respondent has not followed the procedure stipulated in Section 79 of the Act. Thereupon, the petitioner was reinstated on 17.07.2000. For disposal of the appeal and also for non-compliance of the interim directions given therein, the petitioner had filed W.P.No.5049 of 1994 and C.C.No.822 of 2000, it is only thereafter the appeal order dated 06.07.2000 came to be passed. Subsequently, the petitioner issued a legal notice on 24.07.2000 claiming the salary for the aforesaid period. Admittedly, the order in appeal dated 06.07.2000 has remained unchallenged and it has become final. Therefore as on the day, there is no termination and the termination orders issued earlier on 20.08.1991 stands set aside. Therefore, as a consequence, there cannot be any two opinion to the fact that the petitioner will be deemed to be in service all along. However, there is no reason forthcoming or any explanation given as to why the respondents could not take any fresh enquiry immediately. Even the minimum period as contemplated under the provisions of the aforesaid Act as stood expired long back, this writ petition is filed on 01.11.2000 and the interim directions were initially given on 20.03.20001

followed by further directions on 23.08.2004. Apparently, it is only after filing of the present writ petition after a long lapse of time as evident from their own counter affidavit. It is seen that the respondents sought to appoint an enquiry commission on 09.11.2000 and the same was virtually closed on 30.01.2001. No details or any reason has been shown as to how and why such enquiry commission consisting of three junior lecturers was appointed. Subsequently, after remainders, it is only the Special Officer who sought an appointment of an enquiry officer on 23.08.2003, the said enquiry according to the respondents is still not completed. The main allegation as made against the petitioner is the repeated absence and also going on leave. Even by taking into account the alleged piecemeal applications for grant of leave, the period is not such a long one and according to the petitioner, it is only due to the reason that the petitioner had to under go treatment, he was absent. Even by taking into account the number of days of absence with leave or without leave, the period for which now the petitioner is not being paid salaries runs squarely for a quite longer period and such extent could not possibly in any circumstances be taken as a punishment. Considering the period of absence and also the period for which the petitioner is not paid leave and in spite of termination orders being set aside, there cannot be any nexus to the seriousness or gravity to that of any such proposed action, if any. Therefore, *prima facie,* it is quite apparent that withholding of salary for such a long period in spite of the reversal of the orders of termination is wholly unjustified and un-sustainable. No other reason or explanation is forthcoming on behalf of he respondents herein as to why the petitioner should be denied of the said salary for such period. Except the allegations of intermittent absence in the periods as mentioned, there is no other allegation as made against the petitioner to warrant any serious action. Even otherwise, either the Management as it is existed or the Special Officer appointed, did not show any endeavour to see that the enquiry is completed at the earliest. For no fault of him, the petitioner is being sought to be denied of his legitimate entitlement.

As already held by the Division Bench of this Court in ***B.Sanjiva Rao v. Regional Joint Director of School Education, Guntur*** it has to be taken that the said provision apart from being mandate is essential to protect the interest of the employees and avoid prolonged suspension and the enquiries are completed with

promptitude and diligence. On the facts of the case, this Court having held that the impugned action of continued suspension is invalid and being violative of provisions of sub-section (3) of Section 79 of the said Act, the employee was directed to be reinstated to the post forthwith with further directions that he is entitled to all the benefits, pecuniary or otherwise.

In the aforesaid circumstances, it has to be held that the impugned action on the part of the respondents herein in withholding the payment of arrears of salary for the aforesaid period is unjust and unsustainable. Accordingly, it has to be further held that the petitioner is entitled to arrears of salary with all other benefits to which he is entitled to under Law.

The Writ Petition is, accordingly, allowed. The respondents shall pay all such amounts to which the petitioner is entitled within a period of two months from the date of receipt of copy of this order. No costs.

Having regard to the final orders passed in the main Writ Petition and interim orders as granted therein, there can not be any contempt as such at this stage. Accordingly, it is not necessary to consider the same separately. Hence, the Contempt Case is, accordingly, dismissed with liberty to petitioner to file any fresh case in the event of any violation of the final orders in the Writ Petition.

(B.Prakash Rao,J.)

14.02.2005

Chvn.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Monday, the Fourteenth day of February Two thousand and five.

DEPUTY REGISTRAR.

// TRUE COPY//

SECTION OFFICER.

To

1 The Regional Joint Direactor of Intermediate Educational Warangal.
2 The Correspondent, Chaitanya Kalasala Jr.College, Karmanghat,Nagarjunasagar Road, Hyderabad,R.R.District.
3 The Secretary ,Chaitanya Kalasamithi, Karmanghat,Nagarjunasagar Road, Hyderabad,R.R.District.

4 Two C.Cs. to the G.P. for Higher Education, High Court Buildings, Hyderabad.

5 Two C.D. copies.